Amendments To the Limitation Act: Small Passenger Vessels Are Restricted From Limiting Their Liability For Marine Casualties

Katie Matison*
Matthew A. Stoloff**

Limitation is an Ancient Legal Principle

The concept of allowing a shipowner to limit liability for marine casualties has existed in some form for seafaring nations since Roman times and was frequently utilized in the 16th and 17th centuries. Limitation of liability has been an important federal remedy and procedural vehicle in the United States for more than 170 years. Significantly, recent amendments to the statutory provisions eliminated the eligibility of owners of certain small passenger vessels to seek to limit liability for a marine casualty.[1] The amendments categorize a small passenger vessel as a vessel less than 100 gross tons (i) carrying no more than 49 passengers on an overnight domestic voyage or (ii) 150 passengers or less on an overnight non-domestic voyage. The amendments recodified the Limitation Act in 46 U.S.C. §§ 30521 – 30530.

The Basic Legal Framework of the Limitation Act

In 1851, Congress enacted the Limitation of Shipowners' Liability Act ("Limitation Act") for the underlying purpose to "encourage ship-building and to induce capitalists to invest money in this branch of industry."[2] There is a general consensus among legal scholars that the sinking of the *Lexington* in 1848, which caused substantial loss of life and destruction of cargo, motivated Congress to enact the Limitation Act to place the United States on equal footing with other maritime nations.[3] The United States Supreme Court ignored the provisions of the contract of affreightment and held the shipowner of the *Lexington* liable for the loss of cargo specie.[4]

The Limitation Act grants only a shipowner–or a bareboat charterer (also known as a demise charterer)–the right to seek limitation and does not apply to either a time charterer or voyage charterer.[5] Accordingly a shipowner–or bareboat charterer–without negligence, may either be exonerated from liability for a loss or alternatively allowed to limit its liability to third party claimants to a limitation fund equivalent to the post-casualty value of the vessel and the pending freight.[6] The claims subject to limitation are defined within 46 U.S.C. § 30524. The Limitation Act does not allow a shipowner to limit liability for Coast Guard fines or oil pollution under The Oil Pollution Act of 1990, 33 U.S.C. §§ 2701 – 2761.

Federal courts have exclusive jurisdiction to adjudicate claims under the Limitation Act. The benefit of a proceeding under the Limitation Act is to compel all claimants to assert their claims against the shipowner in a single federal court. The claimants comprise a concursus. Once a concursus is formed, the federal court issues a monition or injunction, prohibiting any other claimants from asserting their claims in another court arising out of the casualty. The procedure for actions under the Limitation Act are contained in Rule F of the *Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.*

Foreign-flagged vessels are entitled to file a petition seeking limitation in U.S. courts under certain circumstances. In 1881, the Supreme Court, in a landmark decision, held that a foreign vessel owner was entitled to seek limitation of liability in a United States court applying the Limitation Act.[7] Among the shipowners who petitioned to limit their liability are the owners of the RMS *Titanic*. Although the vessel was flagged as a British ship, the United States Supreme Court held that the owners of the *Titanic* could limit their liability under the Limitation Act.[8] Similarly, the owners of the SS *Princess Sophia*, where 364 people died, sought to limit their liability.[9] And the SS *Eastland*, which capsized in the Chicago river and claimed at least 835 lives, is yet another example in which the owners sought to limit their liability.[10]

But after a fire on the SS *Morro Castle* claimed the lives of approximately 123 passengers and crew[11] on September 8, 1934, in which the owners sought to limit their liability to just $20,000, Congress amended the Limitation Act and enacted the Sirovich Amendments, which provided a Supplemental Fund for personal injury

* Shareholder, Lane Powell PC (Seattle, WA)
** Associate, Lane Powell PC (Seattle, WA)

or death claims.[12] The Supplemental Fund applies only to seagoing vessels seeking to limit liability for personal injury or death claims.[13]

The pivotal factor in whether a shipowner is entitled to limit liability is whether the shipowner was negligent, or had privity or knowledge of the cause of the loss.[14] This is a fact intensive two-step process and can be simplified as follows: (i) What negligent acts or conditions of unseaworthiness caused the accident? (ii) Did the vessel owner have knowledge or privity of those negligent acts or conditions of unseaworthiness that caused the accident?[15]

If a claimant is unable to prove the cause of the injury or loss, a vessel owner is "entitled" to a limitation of liability.[16] Thus, if there is no evidence of negligent acts or conditions of unseaworthiness, the inquiry should end there and the court should grant the vessel owner's petition to limit liability.[17] For example, if the vessel was structurally fit and reasonably safe for the voyage, the equipment on the vessel functioned as required, there was sufficient safety gear on board, and an experienced captain was piloting the vessel, the court is likely to grant the vessel owner the limitation of liability under the Act.[18]

However, if there is evidence of an act of negligence or condition of unseaworthiness that caused the accident, the vessel owner has the burden to establish lack of knowledge and privity. Privity or knowledge may be "actual or constructive" and "may be established even if the owner has not availed himself of whatever 'means of knowledge are reasonably necessary to prevent conditions likely to cause losses.'"[19]

The Right to Limitation Under International Conventions

The legal principle of limitation of liability has been incorporated into international conventions ratified by nearly all seafaring nations. The International Convention Relating to the Limitation of Liability of Owners of Seagoing Ships, Brussels, October 10, 1957 (**"1957 Convention"**) contains fundamental differences from procedures utilized in the United States. For example, the amount of the limitation fund in the 1957 Convention is calculated in Poincaré Francs corresponding to the tonnage of the vessel and is based upon the pre-casualty of the vessel. The 1957 Convention applies only to seagoing vessels.

The International Convention on Limitation of Liability for Maritime Claims (1976) (**"1976 Convention"**) is applicable to seagoing vessels and expanded the category of individuals who could seek limitation. For example, the 1976 Convention allows charterers and insurers to seek limitation, contrary to the U.S. Limitation Act. The 1976 Convention sharply increased the size of the limitation fund available to claimants. The 1976 Convention–like the 1957 Convention–grants the right of limitation for wreck removal and breach of contract. Similar to the U.S. Limitation Act, the 1976 Convention excludes liability for oil pollution. Further, the 1976 Convention in increases the burden on a claimant in limitation seeking to prevent limitation of liability. Article 4 provides that proof is required to prevent limitation if the "loss resulted from his personal act or omission committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result."

The 1996 Protocol modified the 1976 Convention. The 1996 Protocol and the 1976 Convention provide that the limitation fund is comprised of Special Drawings Rights, or units of account created by the International Monetary Fund for uniformity among maritime countries.

The 2022 Amendments to the Limitation of Liability Act Are Significant

Until recently, owners of commercial small passenger vessels, including vessels within the ambit of the *Passenger Vessel Safety Act of 1993*, 46 U.S.C. § 2101, could file a complaint to limit their liability under the Limitation Act regardless of the number of passengers onboard. For example, in 2018, the owner of a 72-foot water taxi that had carried 37 passengers filed suit seeking to limit liability to just $27,300 when a fire resulted in numerous injuries and one death.[20]

Similarly, when a fire on the MV *Conception* caused the deaths of 33 passengers and 1 crew member off the coast of California, the owners alleged that "The wreck and wreckage of the Conception was determined to have zero residual value and the *Conception* is a total loss due to the Fire and has zero value as a result of the Fire." *Matter of Truth Aquatics, Inc.*, No. 2:19-cv-07693, Dkt. 1 (C.D. Cal. Sept. 5, 2019).

Congress reacted to the public outcry on the loss of the *Conception*. On December 23, 2022, an amendment to the Limitation Act was enacted (as part of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023) to restrict owners of small passenger vessels from limiting their liability. Senator Dianne Feinstein said that the proposed amendment was drafted "to update maritime liability rules in the wake of the Conception boat fire because current law is fundamentally unfair to victims of maritime tragedies. . . . Basing current maritime liability rules on a law written in 1851 is ridiculous. Owners of small passenger vessels who are found to be legally responsible for damages should be required to make those payments."[21]

As a result of the 2022 amendments, shipowners and bareboat charterers of vessels are now precluded from limiting their liability if any wooden vessel constructed prior to March 11, 1996 carries at least one passenger for hire; if a vessel carries up to 49 passengers on an overnight domestic voyage; or if a vessel carries up to 150 passengers on any voyage that is not an overnight domestic voyage.[22]

The amendments to the Limitation Act spawned the following issues:

- The amendment is a significant development in the history of Limitation Act because it means that larger numbers of vessel owners are at risk of liability that exceeds the post-casualty value of the vessel and its pending freight. Vessel owners, particularly those who own wooden vessels constructed prior to March 11, 1996 are now exempt from the Limitation Act.
- It is somewhat unclear why the amendment targets "wooden vessels constructed prior to March 11, 1996,

carrying at least one passenger for hire." According to the National Transportation Safety Board's report of the MV *Conception* tragedy,[23] the *Conception* was constructed with fiberglass over plywood and was built in 1981. However, the NTSB noted that Title 46 Code of Federal Regulation Subchapter T was last updated in 1996, which may explain the focus on wooden vessels constructed prior to March 11, 1996.

- It is also unclear what impact the amendment has on wooden vessels that were constructed prior to March 11, 1996, but have been retrofitted to modern standards.
- Except for wooden vessels constructed prior to March 11, 1996, owners of small passenger vessels may be eligible to limit their liability under the Limitation Act if there are 50 or more passengers on an overnight domestic voyage or at least 151 passengers on any voyage that is not an overnight domestic voyage.
- The amendment prohibits *covered small passenger vessels* from restricting either by "regulation, contract, or otherwise, . . . the period for bringing a civil action for personal injury or death to less than two years after the date of injury or death."[24] Further, if notice is not given to the shipowner for personal injury or death, recovery will not be barred if the shipowner had knowledge and is not prejudiced, there is satisfactory reason that notice could not be given, or the owner fails to object.[25]
- Notably, the Coast Guard requires that small passenger vessels that are inspected under 46 C.F.R Subchapter H, K, and T, and that carry more than 12 passengers on an international voyage must have an International Safety Management (ISM) plan. Despite these safety requirements, these vessels are excluded from the Limitation Act.
- The amendment does not define "passenger" or indicate that the number of passengers include the number of crew members. However, 46 C.F.R. § 70.10-1 contains specific definitions of "passenger," depending on the nature of the voyage. For example, a passenger on a voyage that is not an international voyage include individuals except the owner of the vessel, the master of the vessel, and crew members who are engaged in the business of the vessel and are paid for their services.
- The definition of "small passenger vessels" is a barebones version of 46 C.F.R. §§ 114.110(a) and 175.110(a), both of which are federal regulations that apply to small passenger vessels, depending on the number of passengers and nature of the voyage. However, unlike the amendment, the federal regulations expressly exclude certain vessels, such as oceanographic research vessels. The amendment does not reference any such exclusion, and it is unclear whether owners are entitled to limitation of liability if, for example, their oceanographic research vessels organizes a tour open to the public or invites a photographer onboard.

Wing-in-Ground Craft and Seaplanes

The amendment to the Limitation Act also restricts owners of "wing-in-ground craft" from limiting liability, regardless of the number of passengers and the nature of the voyage. A "wing-in-ground craft" is essentially a "boat-plane hybrid."

A federal statute defines the word "vessel" to mean "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water."[26] But as the United States Supreme Court noted, "not every floating structure is a 'vessel.'"[27]

Seaplanes–also referred to as floatplanes or flying boats (depending on the size)–are plentiful throughout the Pacific Northwest and in Alaska. These amphibious aircraft take off and land on water and are frequently used for tourism and to transport goods such as food and medicine. Although the amendment makes no mention of seaplanes, courts in various jurisdictions have held that owners of seaplanes may not limit their liability under the Limitation Act. In 1939, a district court in New York denied limitation of liability and held that the primary purpose of the seaplane "was to travel through the air. It was practically incapable of being used as a means of transportation on water, although its construction enabled it to embark on its journey from the sea and to alight on the water when it had reached its destination, but this was purely incidental to its flight through the air."[28]

Nearly forty years later, another district court in the Virgin Islands denied limitation of liability and observed that "The Congress intended this benefit for owners of ships, vessels which plied the seas from port to port, their only function being that common to waterborne craft. It is certain that no type of aircraft, whatever its capability might be, was in the mind and contemplation of Congress."[29]

Then, in a case involving the Jones Act, the Circuit Court of Appeals for the Fifth Circuit observed that "Virtually every court confronted with the question has decided that a seaplane is not a vessel, either under the Jones Act or in other contexts. . . . An airplane flying through the ozone does not appear to be a vessel within the meaning of an act addressed to the relief of seamen. The definition is not altered by the fact that the plane is equipped with gear that enables it to begin and end an airborne trip on water."[30] The Fifth Circuit appears to have overlooked *Lambros Seaplane Base v. the Batory*,[31] which held that a seaplane is a vessel for purposes of salvage. This, however, is a different issue.

Conclusion–The Aftermath of the Amendments

The amendment significantly impacts owners of small vessels, particularly wooden vessels constructed prior to March 11, 1996 because there is no minimum number of passengers for owners to shield their losses under the Liability Act. For example, the amendment impacts owners who offer charters on historic wooden schooners, which are often used for pirate adventures and sunset cruises at various parts around the country, including Seattle, San Francisco, New Orleans, Key West, New York, Boston, and Portland, Maine.

Companies seeking to acquire additional wooden vessels for their business will need to weigh their options and determine

whether it makes business sense to purchase wooden vessels constructed prior to March 11, 1996. And even if a company chooses to purchase a wooden vessel constructed after March 11, 1996, the company will still need to determine if it makes business sense to purchase larger vessels to accommodate a certain number of people in order to shield their losses under the Limitation Act.

In contrast, owners of small passenger vessels that are constructed from other materials–regardless of when such vessels were constructed–will need to ascertain that there is a minimum number of passengers on the vessels (depending on the voyage) to limit their liability.

Finally, owners of wing-in-ground craft and seaplanes must ensure that their equipment is in good working order and complies with the latest federal regulations, that the pilot and co-pilot are qualified and well trained, and that there is sufficient liability insurance to cover potential losses.

Endnotes

1 46 U.S.C. § 30502(b).
2 *Lewis v. Lewis & Clark Marine, Inc.* 531 U.S. 438 (2001), citing *Norwich Co. v. Wright*, 80 U.S. (13 Wall.) 104, 121 (1872).
3 Schoenbaum, T.J. *Admiralty and Maritime Law*, 6th ed., Vol. 2, §15.1, p. 186.
4 *New Jersey Steam Navigation Co. v. Merchants Bank of Boston (LEXINGTON)*, 46 U.S. (6 Howe) 344 (1848).
5 46 U.S.C. § 30501(2). For a clear and succinct explanation of the differences between these charters in a case involving the Limitation Act, see *In re Tidewater Barge Lines, Inc.*, No. 03-CV-1225-ST, 2005 WL 3992463, at *6-7 (D. Or. Oct. 21, 2005).
6 46 U.S.C. § 30523(a); *see also Pickle v. Char Lee Seafood, Inc.*, 174 F.3d 444, 449 (4th Cir. 1999).
7 *The Scotland*, 105 U.S. (15 Otto) 24, 31 (1881).
8 *Oceanic Steam Nav. Co. v. Mellor* (THE TITANIC), 233 U.S. 718, 731-34 (1914).
9 *The Princess Sophia*, 61 F.2d 339, 355 (9th Cir. 1932), *cert. denied*, 288 U.S. 604 (1933).
10 *The Eastland*, 78 F.2d 984 (7th Cir. 1935), *cert. den.* 297 U.S. 703 (1935).
11 According to the presiding court, 81 passengers out of 318 were dead and missing and 34 crew members out of 231 were dead or missing. *New York & Cuba Mail S.S. Co. v. Continental Ins Co.* of City of New York, 32 F. Supp. 251, 255 (S.D.N.Y. 1940). However, on appeal, the Second Circuit noted that 89 passengers out of 316 were dead or missing, though the number of crew considered dead or missing was consistent with the lower court. 117 F.2d 404, 405 (2d Cir. 1941). Other courts have given conflicting numbers. One case cited legislative discussion that there were 124 deaths on the SS *Morro Castle: In The Pocahontas*, 20 F. Supp. 1004, 1009 (D. N.J. 1937). In later cases, the number of deaths have mysteriously increased. One case suggested that there were 135 deaths. *U.S. v. S.S. Helena*, 295 F. Supp. 610, 611 (E.D. La 1969). And the court in *In re Bell* suggested that there were 134 deaths. No. C12-1126JLR, 2014 WL 129642, at *3 (W.D. Wash. Jan 13, 2014). It is unclear why the numbers of fatalities on the *Morro Castle* have varied throughout the years.
12 In an admiralty case addressing the retroactivity of the Sirovich amendments, the district court of New Jersey quoted Representative Sirovich as stating, "'If my bill which is now being considered as passed, the Morro Castle victims, instead of having had only $20,000 against which the victims could sue, would have had at least $600,000 and $700,000.'" *The Pocahontas,* 20 F. Supp. 1004, 1009 (D. N.J. 1937).
13 *See* 46 U.S.C. § 30524.
14 *See* 46 U.S.C. § 30523(b).
15 *See, e.g., In re BOWFIN M/V*, 339 F.3d 1137 (9th Cir. 2003) (per curiam).
16 *Washington State Dept. of Transp. v. Sea Coast Towing, Inc.*, 148 Fed. Appx. 612, 614 (9th Cir. 2005).
17 *See, e.g., Matter of the Complaint of William and Myo Shears*, C14-1296RSM, 2016 WL 30019 (W.D. Wash. Jan. 4, 2016).
18 *See, e.g., In re Anderson*, 847 F.Supp.2d 1263 (W.D. Wash. 2012).
19 *Schladetzky v. Doe*, No. C19-0493JLR, 2021 WL 1063201, at *4 (W.D. Wash. Mar. 18, 2021) (quoting Wash. State Dep't of Transp., 148 Fed. Appx. at 613).
20 *Matter of A.B.K. Enterprises, Inc.*, No. 8:18-cv-191-T-30TGW, 2019 WL 3068786 (M.D. Fl. June 18, 2019).
21 "Feinstein Applauds House Passage of Maritime Accident Compensation Liability Reform," at https://web.archive.org/web/20230929143035/https://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=A32291B5-FD38-437F-9612-91A5CA2A05B6 Accessed 9 Oct. 2023.
22 46 U.S.C. § 30501(1).
23 National Transportation Safety Board, "Fire Aboard Small Passenger Vessel Conception Platts Harbor, Channel Islands National Park, Santa Cruz Island, 21.5 miles South-Southwest of Santa Barbara, California, September 2, 2019 (NTSB/MAR-20/03). Online at: https://www.ntsb.gov/investigations/AccidentReports/Reports/MAR2003.pdf Accessed 30 Sept. 2023.
24 46 U.S.C. § 30526 (b).
25 46 U.S.C. § 30526(c).
26 1 U.S.C. § 3.
27 *Lozman v. City of Riviera Beach, Fla.*, 568 U.S. 115, 125 (2013).
28 *Noakes v. Imperial Airways*, 29 F. Supp. 412, 413 (S.D.N.Y. 1939).
29 *Hubschman v. Antilles Airboats, Inc.*, 440 F. Supp. 828, 845-846 (D.V.I. 1977).
30 *Smith v. Pan Air Corp.*, 684 F.2d 1102, 1114 (5th Cir. 1982).
31 215 F.2d 228 (2d Cir. 1954).